

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**FRANK FOSTER, et al.,**

**Plaintiffs,**

**v.**

**NATIONWIDE MUTUAL  
INSURANCE COMPANY,**

**Defendant.**

**Case No. 2:08-cv-020**

**Judge Sargus**

**Magistrate Judge Deavers**

**ORDER**

Following today's status conference, the Court orders the following:

1) Defendant's Motion to Bifurcate Liability and Damages into Separate Trials (Doc. 100) is **GRANTED in PART**. As the Court explained at the status conference, the trial will be divided into two phases, with the first phase dealing with the issue of liability and, in the event of a finding for Plaintiffs, the number of overtime hours worked by Plaintiffs. If necessary, the second phase will deal with issues of wilfulness and liquidated damages, and will begin immediately after the issues of the first phase are determined by the jury. During the first phase, the Parties will be precluded from mentioning or offering evidence as to issues of wilfulness and liquidated damages.

2) Trial is set in this matter for Monday, September 12, 2011, at 9 a.m. A more detailed scheduling order with specific pretrial deadlines will be issued by the Court.


3) Defendant's Motion to Clarify Scheduling Order of May 6, 2010 (Doc. 101) is held in abeyance. The Parties are directed to confer and attempt to agree upon the size of a limited

sample of Plaintiffs to potentially testify at trial as to the issue of overtime hours worked. The Parties shall apprise Magistrate Judge Preston Deavers of the status of their efforts at their upcoming telephone conference.

4) Within sixty (60) days of the date of this Order, the Parties may submit proposed case specific jury instructions. Responses to such proposed instructions should be filed within twenty-one (21) days of the service thereof. Reply briefing may be submitted within fourteen (14) days of responses.

**IT IS SO ORDERED.**

2-22-2011  
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**DATED**

  
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**EDMUND A. SARGUS, JR.**  
**UNITED STATES DISTRICT JUDGE**